

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: TRILEAF CORPORATION; Clayton County, Iowa.	ADMINISTRATIVE CONSENT ORDER NO. 2008-SW- 17
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TO: Steve Squires
Trileaf Corporation
5613 Gateway Dr.
Suite 500
Grimes, IA 50111

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Trileaf Corporation, dba E-Farm, (Trileaf) and the Iowa Department of Natural Resources (Department) in order to resolve violations related to the land application of petroleum contaminated soil at a site in Clayton County, Iowa. To resolve the violations documented herein, Trileaf has agreed to a Supplemental Environmental Project in satisfaction of the administrative penalty assessed in this matter.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Susan Miller
IDNR Field Office #1
909 W. Main St., Ste 4
Manchester, IA 52057
Ph: 563-927-2640

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Trileaf is engaged in the business of land farming petroleum contaminated soil (PCS) in Iowa. Trileaf operates its land farming business under the name "E Farm".
2. On July 5, 2005, Department Field Office #6 issued a Notice of Violation to Trileaf due to noncompliance with applicable regulations for the land farming of PCS. The noncompliance included the failure to properly incorporate PCS and improper storage of PCS. The violations were first observed on May 11, 2005 and had not been corrected as of June 27, 2005 despite multiple site visits and at least four contacts from the Field Office. Trileaf acknowledges the occurrence of these violations.
3. On August 17, 2006, Department Field Office #6 issued a Notice of Violation to Trileaf. The Notice cited violations observed on August 4, 2006 related to noncompliance with separation distances from crops for consumption in violation of 567 IAC 120.9(11)"b" and failure to flag the land farming site in violation of rule 120.9(7). Trileaf alleges that flags were initially placed and separation distances were maintained but that the flags were lost during incorporation and not replaced.
4. On October 24, 2006, Department Field Office #1 issued a Notice of Violation to Trileaf. The Notice cited violations observed on October 12, 2006 related to the failure to submit appropriate records prior to land farming in violation of 567 IAC 120.11(1)"b" and failure to flag the land farming site in violation of rule 120.9(7). The documentation that was submitted to the Department contained an incorrect address. Trileaf alleges that flags were initially placed and separation distances were maintained but that the flags were lost during incorporation and not replaced.
5. On June 7, 2007, Department Field Office #1 issued a Notice of Violation to Trileaf. The Notice cited violations observed on June 1, 2007 related to improper storage of PCS in violation of 567 IAC 120.9(3), application of PCS in violation of applicable limits in violation of rule 120.9(6), and the failure to incorporate PCS within 48 hours of application in violation of rule 120.9(9).
6. Beginning in June of 2007, Trileaf has been proactive in initiating discussion with the Department to resolve the violations noted above.
7. In light of the severity of the natural disasters suffered by Iowa communities in May and June of 2008, in June of 2008 the Department requested that Trileaf search for methods by which it could assist an impacted community in lieu of the payment of the administrative penalty in this case. Trileaf was directed to identify environmental remediation services that could be provided by the company to an impacted community.
8. Trileaf was unable to identify potential sources of contaminated soil arising from the 2008 natural disasters for which a governmental agency had primary responsibility

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and for which Trileaf could provide remediation services. Therefore Trileaf proposed to donate \$2,100 to the Economic Development Board of Parkersburg, Iowa to be allocated to the city's tree board. On May 25, 2008, Parkersburg was hit by a tornado classified as level EF5. The tornado destroyed a large section of the town and all of the trees in that area.

9. Tree planting in an urban environment has numerous environmental impacts. Trees can remove pollutants from air and groundwater, slow erosion, reduce energy consumption, and lower stormwater runoff temperatures.

IV. CONCLUSIONS OF LAW

The Department and Trileaf agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

2. The Commission has adopted 567 IAC chapter 120 "Landfarming of Petroleum Contaminated Soil" for the purpose of establishing rules for the safe and effective remediation and disposal of PCS through landfarming.

3. Pursuant to 567 IAC 120.9(3), PCS may be stored at the site of land application for up to seven days (or until the start of the land farming season) on an impervious surface, under a roof or tarp, in an area with minimal potential for storm water run-on. Trileaf has violated this rule.

4. Pursuant to 567 IAC 120.9(6), PCS must be land farmed in accordance with specific depth restrictions, dependent upon the constituents of the PCS. PCS may not be applied at a rate greater than 4 inches regardless of the constituents of the PCS. Trileaf has violated this rule.

5. Pursuant to 567 IAC 120.9(7), landfarm plots upon which PCS is land applied shall be flagged for one year after land application or until the landfarm is closed pursuant to rule 120.12, whichever is shorter. Trileaf has violated this rule.

6. Pursuant to 567 IAC 120.9(9), PCS shall be incorporated into the soil by tilling, disking, or other suitable means within 48 hours of being land applied or before the next precipitation event, whichever is sooner. Trileaf has violated this rule.

7. Pursuant to 567 IAC 120.9(11)"b", single-use landfarms shall not grow crops within 15 feet of a landfarm plot that is flagged pursuant to subrule 120.9(7). Crops for

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human and livestock consumption may be grown at a single-use landfarm after the landfarm plot is closed pursuant to subrule 120.12(1). Trileaf has violated this rule.

8. Pursuant to 567 IAC 120.11(1)"b"(2), single-use landfarms shall submit an address, topographic map, soil map with key, and a map of the 100-year flood plain illustrating and labeling where the PCS is to be applied. Multiuse landfarms shall report the landfarm plots to which the PCS is to be applied. Trileaf has violated this rule.

V. ORDER

The Department orders Trileaf and Trileaf agrees to undertake the following measures to resolve the violations documented herein:

1. Trileaf shall submit a PCS landfarming notification form to the Department at least 48 hours prior to delivery of PCS to the site of landfarming, except in relation to Department-supervised emergency cleanups governed by rule 567 IAC 120.6(1).

2. Flagging of the site of landfarming as required by 567 IAC 120.9(7) shall be completed at least 48 hours prior to the delivery of PCS to the site. Photographs shall be taken.

3. On the date of incorporation of PCS at any site subject to a notification filed by Trileaf, Trileaf shall inspect the site and replace any and all flags damaged during incorporation. This inspection must occur on the same calendar date as the incorporation. Photographs shall be taken.

4. Within 48 hours of any turning of PCS pursuant to 567 IAC 120.9(10) at any site subject to a notification filed by Trileaf, Trileaf shall inspect the site and replace any and all flags damaged during turning.

5. Upon the request of the Department, Trileaf shall notify the Department after flagging and after each inspection required pursuant to paragraphs 3 and 4, above.

6. The requirements set forth in paragraphs 1 through 5 shall be required for a period of three years from the date of this Order unless the Department waives any requirement in writing. The termination or waiver of any requirement set forth herein shall not be construed to be a waiver of any underlying legal requirement.

7. On August 8, 2008, Trileaf donated \$2,100 to the Economic Development Board of Parkersburg, Iowa to be allocated to the city's tree board for the purpose of replanting trees lost to the tornado that struck Parkersburg on May 25, 2008. This planting of trees pursuant to this donation is deemed by the Department to be an acceptable Supplemental Environmental Project (SEP) undertaken in lieu of payment of the \$1,750 administrative

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penalty in this matter. The tree planting paid for by Trileaf will provide an environmental benefit and is not a responsibility of Trileaf under any permit, statute or regulation.

VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000 per day for solid waste violations.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. The Department has alleged that Trileaf achieved an economic benefit arising from the facts set forth above. Such economic benefit would be due to costs saved related to labor and fuel costs, document preparation costs, and storage costs. Trileaf alleges that, except for the violations discovered on May 11, 2005, Trileaf incurred the appropriate expenditures but later actions negated these expenditures. Therefore, the Department has determined that a penalty of \$250 is warranted. This penalty has been satisfied through the above-described SEP.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. The rules for landfarming of PCS are designed to prevent the contamination of the waters of the state, to limit human exposure to PCS, and to facilitate the breakdown and volatilization of petroleum compounds. The failure to comply with applicable regulations threatens the waters of the state and poses a risk to human health and the environment. A penalty of \$500 is warranted based upon these considerations. This penalty has been satisfied through the above-described SEP.

c. Culpability. Trileaf was issued three Notices of Violation within a one-year period and a fourth Notice of Violation the previous year. Trileaf was unable to maintain compliance despite these notifications from the Department. A penalty of \$1,000 is warranted based upon these considerations. This penalty has been satisfied through the above-described SEP.

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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Trileaf. By signature to this Order, all rights to appeal this Order are waived.

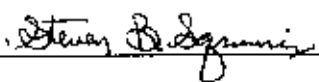
VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 26 day of
August, 2008



TRILEAF CORPORATION

Dated this 20th day of
August, 2008

Field Office #1; Jon Tack; VI.B(2)